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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2013-792

12 **IGNACIO NUNEZ**
13 **247 Lansford Court**
14 **American Canyon, CA 94503**

A C C U S A T I O N

15 **Registered Nurse License No. 637536**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about May 24, 2004, the Board of Registered Nursing issued Registered Nurse
23 License Number 637536 to Ignacio Nunez (Respondent). The Registered Nurse License was in
24 full force and effect at all times relevant to the charges brought in this Accusation and will expire
25 on December 31, 2013, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Registered Nursing (Board),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline
3 any licensee, including a licensee holding a temporary or an inactive license, for any reason
4 provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
6 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
7 licensee or to render a decision imposing discipline on the license. Section 118, subdivision (b),
8 of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall
9 not deprive a board of jurisdiction to proceed with a disciplinary action during the period within
10 which the license may be renewed, restored, reissued or reinstated. Under section 2811,
11 subdivision (b), of the Code, the Board may renew an expired license at any time within eight
12 years after the expiration.

13 **STATUTORY PROVISIONS**

14 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or
15 revoke a license on the ground that the licensee has been convicted of a crime substantially
16 related to the qualifications, functions, or duties of the business or profession for which the
17 license was issued.

18 7. Section 2761, subdivision (f), of the Code provides that the Board may take
19 disciplinary action against a certified or licensed nurse for conviction of a felony or of any
20 offense substantially related to the qualifications, functions, and duties of a registered nurse.

21 **REGULATORY PROVISION**

22 8. California Code of Regulations, title 16, section 1444, provides that a conviction or
23 act shall be considered to be substantially related to the qualifications, functions or duties of a
24 registered nurse if to a substantial degree it evidences the present or potential unfitness of a
25 registered nurse to practice in a manner consistent with the public health, safety, or welfare.

26 **COST RECOVERY**

27 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
28 administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
4 included in a stipulated settlement.

5 **CAUSE FOR DISCIPLINE**
6 (Bus. & Prof. Code §§ 490 and 2761, subd. (f))
7 (Criminal Conviction)

8 10. Respondent has subjected his registered nurse to discipline under Code sections 490
9 and 2761, subdivision (f) because he was convicted of a crime substantially related to the
10 qualifications, functions, or duties of a registered nurse as defined in California Code of
11 Regulations, title 16, section 1444. On or about June 7, 2012, in Napa County Superior Court
12 Case No. CR 160664, *People v. Ignacio Nunez*, Respondent was convicted by his plea of no
13 contest of violating Penal Code section 69 (Resisting Executive Officer), a misdemeanor, and was
14 placed on three years formal probation. The circumstances of the offense are described below.

15 11. On or about February 3, 2012, police conducted a welfare check at Respondent's
16 home in American Canyon after Respondent's wife had told a friend that Respondent was acting
17 strangely. When police arrived to investigate, Respondent lunged at the officers, attacked them
18 with his fists, and yelled nonsensical statements. Officers were able to subdue Respondent only
19 after stunning him with a Taser gun and forcibly immobilizing him with a Wrap restraint device.
20 Respondent's wife later told police that her husband was not normally a violent person, but that
21 he had been behaving erratically during the last couple of days as a withdrawal symptom from
22 being taken off prescribed medication.

23 **DISCIPLINE CONSIDERATIONS**

24 12. To determine the degree of discipline, if any, to be imposed on Respondent,
25 Complainant alleges that on or about May 19, 2004, in the case *In the Matter of the Statement of*
26 *Issues Against Ignacio Nunez*, Case No. 2004-189, a Board decision provided for Respondent to
27 be issued a registered nurse license that would be immediately revoked and placed on three years
28 probation. The decision became final and Respondent completed his probation.

13. The disciplinary action described above was based on Respondent's prior criminal

1 convictions, as follows.

2 A. On or about December 11, 2002, in Napa County Superior Court Case No CR
3 110291, *People v. Ignacio Nunez*, Respondent was convicted by his plea of no contest of
4 violating Vehicle Code section 23152, subdivision (b) (Driving with Blood Alcohol Content of
5 .08 Percent or More). The offense occurred on or about July 27, 2002, when Respondent drove a
6 car with a blood alcohol level of .17 percent.

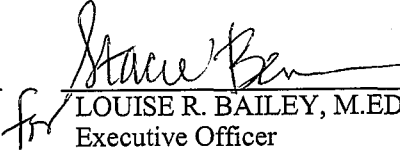
7 B. On or about May 18, 1998, in Napa County Superior Court Case No. CR 33637,
8 Respondent was convicted by his plea of no contest of violating Vehicle Code section 14601.1,
9 subdivision (a) (Driving with Suspended License). The offense occurred on or about June 2,
10 1997, when Respondent drove a car while his license was suspended for a prior incident where he
11 was found to be driving with a detectable amount of blood alcohol while being less than 21 years
12 old.

13 **PRAYER**

14 THEREFORE, Complainant requests that a hearing be held on the matters alleged in this
15 Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:

- 16 1. Revoking or suspending Registered Nurse License Number 637536, issued to Ignacio
17 Nunez;
18 2. Ordering Ignacio Nunez to pay the Board of Registered Nursing the reasonable costs
19 of the investigation and enforcement of this case, under Business and Professions Code section
20 125.3;
21 3. Taking such other and further action as deemed necessary and proper.

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23
24 DATED: MARCH 18, 2013


fr LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order in Case No. 2004-189

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BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

Case No. 2004-189

IGNACIO NUNEZ
4409 Dove Court
Napa, CA 94558

OAH No.

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on May 19, 2004.

It is so ORDERED April 19, 2004.

Sandra L. Erickson

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

1 BILL LOCKYER, Attorney General
of the State of California

2 HANNAH HIRSCH ROSE
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6 Attorneys for Complainant

7
8 BEFORE THE
BOARD OF REGISTERED NURSING
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

10
11 In the Matter of the Statement of Issues Against:

12 IGNACIO NUNEZ
13 4409 Dove Court
Napa, CA 94558,

14 Respondent,

Case No.: 2004-189

OAH No.

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**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
entitled proceedings that the following matters are true:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of the Board
of Registered Nursing. She brought this action solely in her official capacity and is represented in
this matter by Bill Lockyer, Attorney General of the State of California, by Hannah Hirsch Rose,
Deputy Attorney General.

2. Ignacio Nunez (Respondent) is representing himself in this proceeding and has chosen
not to exercise his right to be represented by counsel.

3. On or about August 13, 2003, the Board of Registered Nursing denied the application
for a registered nurse license for Ignacio Nunez (Respondent).

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JURISDICTION

4. Statement of Issues No. 2004-189 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on January 29, 2004. Respondent timely contested the Statement of Issues. A copy of Statement of Issues No. 2004-189 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Statement of Issues No. 2004-189. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 2004-189.

9. Respondent agrees that his Registered Nurse License is subject to denial and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of

1 Registered Nursing may communicate directly with the Board regarding this stipulation and
2 settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent
3 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
4 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as
5 its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
6 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and
7 the Board shall not be disqualified from further action by having considered this matter.

8 11. The parties understand and agree that facsimile copies of this Stipulated Settlement
9 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect
10 as the originals.

11 12. In consideration of the foregoing admissions and stipulations, the parties agree that
12 the Board may, without further notice or formal proceeding, issue and enter the following
13 Disciplinary Order:

14 **DISCIPLINARY ORDER**

15 IT IS HEREBY ORDERED that the application of Respondent Ignacio Nunez for
16 licensure is hereby granted. Upon successful completion of the licensure examination and all other
17 licensing requirements, a license shall be issued to Respondent. Said license shall immediately be
18 revoked, the order of revocation stayed and Respondent placed on probation for a period of three (3)
19 years on the following conditions:

20 **Severability Clause.** Each condition of probation contained herein is a separate
21 and distinct condition. If any condition of this Order, or any application thereof, is declared
22 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
23 applications thereof, shall not be affected. Each condition of this Order shall separately be valid and
24 enforceable to the fullest extent permitted by law.

25 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and
26 detailed account of any and all violations of law shall be reported by Respondent to the Board in
27 writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this
28 condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days

1 of the effective date of the decision, unless previously submitted as part of the licensure application
2 process.

3 **Criminal Court Orders:** If Respondent is under criminal court orders, including
4 probation or parole, and the order is violated, this shall be deemed a violation of these probation
5 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

6 2. **Comply with the Board's Probation Program.** Respondent shall fully comply with
7 the conditions of the Probation Program established by the Board and cooperate with representatives
8 of the Board in its monitoring and investigation of the Respondent's compliance with the Board's
9 Probation Program. Respondent shall inform the Board in writing within no more than 15 days of
10 any address change and shall at all times maintain an active, current license status with the Board,
11 including during any period of suspension.

12 Upon successful completion of probation, Respondent's license shall be fully restored.

13 3. **Report in Person.** Respondent, during the period of probation, shall appear in person
14 at interviews/meetings as directed by the Board or its designated representatives.

15 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or
16 practice as a registered nurse outside of California shall not apply toward a reduction of this
17 probation time period. Respondent's probation is tolled, if and when he resides outside of
18 California. Respondent must provide written notice to the Board within 15 days of any change of
19 residency or practice outside the state, and within 30 days prior to re-establishing residency or
20 returning to practice in this state.

21 Respondent shall provide a list of all states and territories where he has ever been licensed
22 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
23 information regarding the status of each license and any changes in such license status during the
24 term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing
25 license during the term of probation.

26 5. **Submit Written Reports.** Respondent, during the period of probation, shall submit
27 or cause to be submitted such written reports/declarations and verification of actions under penalty
28 of perjury, as required by the Board. These reports/declarations shall contain statements relative to

1 Respondent's compliance with all the conditions of the Board's Probation Program. Respondent
2 shall immediately execute all release of information forms as may be required by the Board or its
3 representatives.

4 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
5 state and territory in which he has a registered nurse license.

6 **6. Function as a Registered Nurse.** Respondent, during the period of probation, shall
7 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
8 6 consecutive months or as determined by the Board.

9 For purposes of compliance with the section, "engage in the practice of registered nursing"
10 may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-
11 direct patient care position that requires licensure as a registered nurse.

12 The Board may require that advanced practice nurses engage in advanced practice nursing
13 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

14 If Respondent has not complied with this condition during the probationary term, and
15 Respondent has presented sufficient documentation of his good faith efforts to comply with this
16 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
17 extension of Respondent's probation period up to one year without further hearing in order to comply
18 with this condition. During the one year extension, all original conditions of probation shall apply.

19 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain
20 prior approval from the Board before commencing or continuing any employment, paid or voluntary,
21 as a registered nurse. Respondent shall cause to be submitted to the Board all performance
22 evaluations and other employment related reports as a registered nurse upon request of the Board.

23 Respondent shall provide a copy of this Decision to his employer and immediate
24 supervisors prior to commencement of any nursing or other health care related employment.

25 In addition to the above, Respondent shall notify the Board in writing within seventy-two
26 (72) hours after he obtains any nursing or other health care related employment. Respondent shall
27 notify the Board in writing within seventy-two (72) hours after he is terminated or separated,
28 regardless of cause, from any nursing, or other health care related employment with a full

1 explanation of the circumstances surrounding the termination or separation.

2 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
3 Respondent's level of supervision and/or collaboration before commencing or continuing any
4 employment as a registered nurse, or education and training that includes patient care.

5 Respondent shall practice only under the direct supervision of a registered nurse in good
6 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
7 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

8 Respondent's level of supervision and/or collaboration may include, but is not limited to
9 the following:

10 (a) **Maximum** - The individual providing supervision and/or collaboration is present in
11 the patient care area or in any other work setting at all times.

12 (b) **Moderate** - The individual providing supervision and/or collaboration is in the
13 patient care unit or in any other work setting at least half the hours Respondent works.

14 (c) **Minimum** - The individual providing supervision and/or collaboration has person-to-
15 person communication with Respondent at least twice during each shift worked.

16 (d) **Home Health Care** - If Respondent is approved to work in the home health care
17 setting, the individual providing supervision and/or collaboration shall have person-to-person
18 communication with Respondent as required by the Board each work day. Respondent shall
19 maintain telephone or other telecommunication contact with the individual providing supervision
20 and/or collaboration as required by the Board during each work day. The individual providing
21 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
22 patients' homes visited by Respondent with or without Respondent present.

23 **9. Employment Limitations.** Respondent shall not work for a nurse's registry, in any
24 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
25 or for an in-house nursing pool.

26 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
27 registered nursing supervision and other protections for home visits have been approved by the
28 Board. Respondent shall not work in any other registered nursing occupation where home visits are

1 required.

2 Respondent shall not work in any health care setting as a supervisor of registered nurses.

3 The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or
4 unlicensed assistive personnel on a case-by-case basis.

5 Respondent shall not work as a faculty member in an approved school of nursing or as an
6 instructor in a Board approved continuing education program.

7 Respondent shall work only on a regularly assigned, identified and predetermined
8 worksite(s) and shall not work in a float capacity.

9 If Respondent is working or intends to work in excess of 40 hours per week, the Board
10 may request documentation to determine whether there should be restrictions on the hours of work.

11 **10. Complete a Nursing Course(s).** Respondent, at his own expense, shall enroll and
12 successfully complete a course(s) relevant to the practice of registered nursing no later than six
13 months prior to the end of her probationary term.

14 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
15 Respondent shall submit to the Board the original transcripts or certificates of completion for the
16 above required course(s). The Board shall return the original documents to Respondent after
17 photocopying them for its records.

18 **11. Violation of Probation.** If Respondent violates the conditions of his probation, the
19 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
20 and impose the stayed discipline (revocation/suspension) of Respondent's license.

21 If during the period of probation, an accusation or petition to revoke probation has been
22 filed against Respondent's license or the Attorney General's Office has been requested to prepare
23 an accusation or petition to revoke probation against Respondent's license, the probationary period
24 shall automatically be extended and shall not expire until the accusation or petition has been acted
25 upon by the Board.

26 **12. License Surrender.** During Respondent's term of probation, if he ceases practicing
27 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
28 Respondent may surrender his license to the Board. The Board reserves the right to evaluate

Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

(1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license surrendered for a mental or physical illness.

13. Physical Examination. Within 45 days of the effective date of this Decision, Respondent, at his own expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the Respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If Respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, Respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified Respondent that a medical determination permits Respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

1 If Respondent fails to have the above assessment submitted to the Board within the 45-day
2 requirement, Respondent shall immediately cease practice and shall not resume practice until
3 notified by the Board. This period of suspension will not apply to the reduction of this probationary
4 time period. The Board may waive or postpone this suspension only if significant, documented
5 evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent
6 to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver
7 or extension may be permitted.

8 **14. Participate in Treatment/Rehabilitation Program for Chemical Dependence.**

9 Respondent, at his expense, shall successfully complete during the probationary period or shall have
10 successfully completed prior to commencement of probation a Board-approved
11 treatment/rehabilitation program of at least six months duration. As required, reports shall be
12 submitted by the program on forms provided by the Board. If Respondent has not completed a
13 Board-approved treatment/rehabilitation program prior to commencement of probation, Respondent,
14 within 45 days from the effective date of the decision, shall be enrolled in a program. If a program
15 is not successfully completed within the first nine months of probation, the Board shall consider
16 Respondent in violation of probation.

17 Based on Board recommendation, each week Respondent shall be required to attend at
18 least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics
19 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by
20 the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall
21 be added. Respondent shall submit dated and signed documentation confirming such attendance to
22 the Board during the entire period of probation. Respondent shall continue with the recovery plan
23 recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or
24 other ongoing recovery groups.

25 **15. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent shall
26 completely abstain from the possession, injection or consumption by any route of all psychotropic
27 (mood altering) drugs, including alcohol, except when the same are ordered by a health care
28 professional legally authorized to do so as part of documented medical treatment. Respondent shall

1 have sent to the Board, in writing and within fourteen (14) days, by the prescribing health
2 professional, a report identifying the medication, dosage, the date the medication was prescribed, the
3 Respondent's prognosis, the date the medication will no longer be required, and the effect on the
4 recovery plan, if appropriate.

5 Respondent shall identify for the Board a single physician, nurse practitioner or physician
6 assistant who shall be aware of Respondent's history of substance abuse and will coordinate and
7 monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-
8 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to
9 the Board on a quarterly basis Respondent's compliance with this condition. If any substances
10 considered addictive have been prescribed, the report shall identify a program for the time limited
11 use of any such substances.

12 The Board may require the single coordinating physician, nurse practitioner, or physician
13 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

14 **16. Submit to Tests and Samples.** Respondent, at his expense, shall participate in a
15 random, biological fluid testing or a drug screening program which the Board approves. The length
16 of time and frequency will be subject to approval by the Board. Respondent is responsible for
17 keeping the Board informed of Respondent's current telephone number at all times. Respondent
18 shall also ensure that messages may be left at the telephone number when he is not available and
19 ensure that reports are submitted directly by the testing agency to the Board, as directed. Any
20 confirmed positive finding shall be reported immediately to the Board by the program and
21 Respondent shall be considered in violation of probation.

22 In addition, Respondent, at any time during the period of probation, shall fully cooperate
23 with the Board or any of its representatives, and shall, when requested, submit to such tests and
24 samples as the Board or its representatives may require for the detection of alcohol, narcotics,
25 hypnotics, dangerous drugs, or other controlled substances.

26 If Respondent has a positive drug screen for any substance not legally authorized and not
27 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files
28 a petition to revoke probation or an accusation, the Board may suspend Respondent from practice

1 pending the final decision on the petition to revoke probation or the accusation. This period of
2 suspension will not apply to the reduction of this probationary time period.

3 If Respondent fails to participate in a random, biological fluid testing or drug screening
4 program within the specified time frame, Respondent shall immediately cease practice and shall not
5 resume practice until notified by the Board. After taking into account documented evidence of
6 mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend
7 Respondent from practice pending the final decision on the petition to revoke probation or the
8 accusation. This period of suspension will not apply to the reduction of this probationary time period.

9 **17. Mental Health Examination.** Respondent shall, within 45 days of the effective date
10 of this Decision, have a mental health examination including psychological testing as appropriate
11 to determine his capability to perform the duties of a registered nurse. The examination will be
12 performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by
13 the Board. The examining mental health practitioner will submit a written report of that assessment
14 and recommendations to the Board. Costs of the examination will be paid by Respondent.
15 Recommendations for treatment, therapy or counseling made as a result of the mental health
16 examination will be instituted and followed by Respondent, and paid for by Respondent.

17 If Respondent is determined to be unable to practice safely as a registered nurse, the
18 licensed mental health care practitioner making this determination shall immediately notify the
19 Board and Respondent by telephone, and the Board shall request that the Attorney General's office
20 prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice
21 and may not resume practice until notified by the Board. During this period of suspension,
22 Respondent shall not engage in any practice for which a license issued by the Board is required, until
23 the Board has notified Respondent that a mental health determination permits Respondent to resume
24 practice. This period of suspension will not apply to the reduction of this probationary time period.

25 If Respondent fails to have the above assessment submitted to the Board within the 45-day
26 requirement, Respondent shall immediately cease practice and shall not resume practice until
27 notified by the Board. This period of suspension will not apply to the reduction of this probationary
28 time period. The Board may waive or postpone this suspension only if significant, documented

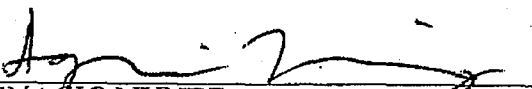
1 evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent
2 to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver
3 or extension may be permitted.

4 18. **Therapy or Counseling Program.** Respondent, at his expense, shall participate in
5 an on-going counseling program until such time as the Board releases him from this requirement and
6 only upon the recommendation of the counselor. Written progress reports from the counselor will
7 be required at various intervals.

8 ACCEPTANCE

9 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
10 stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated
11 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound
12 by the Decision and Order of the Board of Registered Nursing.

13 DATED: 2-17-04.

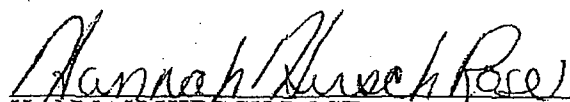
14 
15 IGNACIO NUNEZ
16 Respondent

17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
20 Affairs.

21 DATED: 2-24-2004

22 BILL LOCKYER, Attorney General
23 of the State of California

24 
25 HANNAH HIRSCH ROSE
26 Deputy Attorney General

27 Attorneys for Complainant

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Exhibit A
Statement of Issues No. 2004-189

1 BILL LOCKYER, Attorney General
of the State of California
2 HANNAH HIRSCH ROSE, State Bar No. 56276
Deputy Attorney General

3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5515
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7 **BEFORE THE**
8 **BOARD OF REGISTERED NURSING**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues Against:

Case No. 2004-189

11 IGNACIO NUNEZ
12 4409 Dove Court
13 Napa, California 94558

STATEMENT OF ISSUES

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Statement of
19 Issues solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
20 Department of Consumer Affairs.

21 2. On or about April 14, 2003, the Board of Registered Nursing, Department
22 of Consumer Affairs received an application for a registered nurse license from Ignacio Nunez
23 (Respondent). On or about April 14, 2003, Ignacio Nunez certified under penalty of perjury to
24 the truthfulness of all statements, answers, and representations in the application. The Board
25 denied the application on August 13, 2003.

26 **JURISDICTION**

27 3. This Statement of Issues is brought before the Board of Registered
28 Nursing (Board), Department of Consumer Affairs, under the authority of the following laws.

1 All section references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 480 of the Code states, in pertinent part:

3 "(a) A board may deny a license regulated by this code on the grounds that the
4 applicant has one of the following:

5 "(1) Been convicted of a crime. A conviction within the meaning of this section
6 means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action
7 which a board is permitted to take following the establishment of a conviction may be taken
8 when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal,
9 or when an order granting probation is made suspending the imposition of sentence, irrespective
10 of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

11

12 "(3) Done any act which if done by a licensee of the business or profession in
13 question, would be grounds for suspension or revocation of license.

14 "The board may deny a license pursuant to this subdivision only if the crime or act
15 is substantially related to the qualifications, functions or duties of the business or profession for
16 which application is made.

17

18 5. Section 492 of the Code states, in pertinent part:

19 "Notwithstanding any other provision of law, successful completion of any
20 diversion program under the Penal Code, or successful completion of an alcohol and drug
21 problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12
22 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
23 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in
24 that division, from taking disciplinary action against a licensee or from denying a license for
25 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
26 record pertaining to an arrest.

27 6. Section 493 of the Code states:

28 "Notwithstanding any other provision of law, in a proceeding conducted by a

1 board within the department pursuant to law to deny an application for a license or to suspend or
2 revoke a license or otherwise take disciplinary action against a person who holds a license, upon
3 the ground that the applicant or the licensee has been convicted of a crime substantially related to
4 the qualifications, functions, and duties of the licensee in question, the record of conviction of the
5 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
6 and the board may inquire into the circumstances surrounding the commission of the crime in
7 order to fix the degree of discipline or to determine if the conviction is substantially related to the
8 qualifications, functions, and duties of the licensee in question.

9 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
10 'registration.'"

11 7. Section 2761 of the Code states, in relevant part, that the Board may take
12 disciplinary action against a certified or licensed nurse or deny an application for a certificate or
13 license for any of the following:

14 (a) Unprofessional conduct

15 (f) Conviction of a felony or of any offense substantially related to the
16 qualifications, functions, and duties of a registered nurse, in which event the record of the
17 conviction shall be conclusive evidence thereof.

18 8. Section 2762 of the Code states, in relevant part, that in addition to other
19 acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional
20 conduct for a person licensed under this chapter to do any of the following:

21
22 (b) Use any controlled substance as defined in Division 10 (commencing with
23 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as
24 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
25 injurious to himself or herself, any other person, or the public or to the extent that such use
26 impairs his or her ability to conduct with safety to the public the practice authorized by his or her
27 license.

28 (c) Be convicted of a criminal offense involving the prescription,

1 consumption, or self-administration of any of the substances described in subdivisions (a) and (b)
2 of this section, or the possession of, or falsification of a record pertaining to, the substances
3 described in subdivision (a) of this section, in which event the record of the conviction is
4 conclusive evidence thereof.

5 FIRST CAUSE FOR DENIAL OF APPLICATION

6 (Conviction of a Crime)

7 9. Respondent's application is subject to denial under section 490(a)(1) of the
8 Code in that on or about December 11, 2002, in a criminal proceeding entitled *People of the*
9 *State of California vs Ignacio Nunez* in Napa County Superior Court, Case Number CR110291,
10 Respondent was convicted by plea of no contest to a violation of Vehicle Code section 23152(b),
11 a misdemeanor. The circumstances are as follows:

12 a. On or about July 27, 2002, respondent drove a car while under the
13 influence of alcohol and with a blood alcohol of .17. He was ordered to serve 2 days in county
14 jail, was fined \$1350.00 and was placed on five (5) years summary probation.

15 SECOND CAUSE FOR DENIAL OF APPLICATION

16 (Conviction of Crime)

17 10. Respondent's application is subject to denial under section 490(a)(1) of the
18 Code in that on or about May 18, 1998, in a criminal proceeding entitled *People of the State of*
19 *California vs Ignacio Nunez* in Napa County Superior Court, Case Number CR33637,
20 Respondent was convicted by plea of no contest to a violation of Vehicle Code section
21 14601.1(a), a misdemeanor. The circumstances are as follows:

22 a. On or about June 2, 1997, while driving on a suspended license as
23 a result of a prior incident wherein respondent's license was suspended because he was driving
24 with a detectable blood alcohol while under 21 years of age, respondent was stopped by a police
25 officer and at the time of the stop he was driving on a suspended license and he gave false
26 information to the police officer regarding his true identity. Respondent completed his court-
27 ordered 80 hours of community service and his probation for this offense.

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